S. HRG. 103-727

CONVENTION ON REGULATING FISHING VESSELS ON THE HIGH SEAS (TREATY DOC. 103-24)

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JUNE 28, 1994

Printed for the use of the Committee on Foreign Relations

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CONVENTION ON REGULATING FISHING VESSELS ON THE HIGH SEAS (TREATY DOC. 103–24)

TUESDAY, JUNE 28, 1994

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Claiborne Pell (chairman of the committee) presiding.

Present: Senators Pell and Murkowski.

The CHAIRMAN. The Committee on Foreign Relations will come to order.

This morning, we will conduct a hearing on the treaty to regulate fishing vessels on the high seas. The treaty was negotiated to address the problem of reflagging high seas fishing vessels which are attempting to avoid compliance with the fishing regulations.

Our witness is Ambassador David Colson, Deputy Assistant Secretary for Oceans.

The committee will be interested in hearing about the nature of the reflagging issue, and why they necessitated the negotiation of this treaty. I hope that our witness will address these specific interests of the United States that are at risk and will be protected by becoming a party to this treaty.

I understand the treaty is based upon the fundamental principles of the Law of the Sea Convention. In view of the significant progress made at the U.N. recently in developing an agreement to address the U.S. objections to the deep seabed mining provisions of the Convention, part XI, I am hopeful that the administration will be in a position to support the Convention and agreement, and to transmit them to the Senate for advice and consent later this very year.

In the turbulent aftermath of the cold war, we are witnessing an increasing possibility that the world's oceans could become the subject of disputes, endangering many security and economic interests of our Nation. In this light, I believe we can only benefit from a regime that brings the rule of international law to the oceans. The protection of our security interests in unimpeded military sea and air traffic and our right to regulate living marine resources within the exclusive economic zone of the United States are only two such rights reaffirmed by the Law of the Sea Convention.

I look forward to Ambassador Colson's views and any insights he can give us with regard to the transmittal of this treaty to the Senate.

Mr. Colson, the floor is yours. Any portion of your statement that is not read can be inserted in the record as if it was read. We are glad to hear from you.

STATEMENT OF HON. DAVID A. COLSON, DEPUTY ASSISTANT SECRETARY FOR OCEANS, DEPARTMENT OF STATE

Ambassador COLSON. Thank you very much, Mr. Chairman.

I do have a prepared statement. I would ask that it be placed in the record, and I will summarize it and try to answer some of the questions that you just raised.

The CHAIRMAN. Without objection, it will be placed in the record as if read.

Ambassador COLSON. I appreciate the opportunity to appear before the committee in support of the Agreement to Promote Compliance With International Conservation Management Measures by Fishing Vessels on the High Seas. This agreement is sometimes called the "Flagging" or the "Reflagging" agreement.

I am particularly pleased to report that this agreement was made possible largely by the initiative of the United States. This is a very good agreement. If it is well implemented, it will do a great deal to resolve the problem of irresponsible fishing activity on the high seas around the world.

We urge the Senate to provide its advice and consent to this agreement so that we may promptly reiterate our Nation's commitment to responsible fishing on the high seas and press others in the international community to make the same commitment.

This agreement is good for the marine environment and it is good for the U.S. fishing industry. Only through more responsible high seas fishing practices of the sort required by this agreement can we hope to ensure the sustainable use of high seas fishing resources and the livelihoods of our fishermen that depend upon them.

This agreement supports and complements our existing regional agreements of importance to the United States. It will make more effective our Atlantic Tunas Convention. It will make more effective our South Pacific tuna arrangements. And it will certainly complement the new agreement on the "Donut Hole" that the administration will shortly be submitting to the Senate for its advice and consent.

The agreement, as you noted, rests upon the legal foundation established in the 1982 United Nations Convention on the Law of the Sea. The fishery provisions of that Convention contain basic obligations for states whose vessels fish on the high seas to cooperate in the conservation and management of high seas resources.

Under the Law of the Sea Convention, flag states must also ensure that there is a genuine link between themselves and the vessels that fly their flag. What this agreement does is to build upon and to give content to those general Law of the Sea obligations in order to address a growing threat to the integrity of multilateral fishing organizations and to the sustainable use of fishing resources on the high seas.

The problems the agreement addresses are twofold. First, we encounter more and more these days that fishing vessels flying the flag of a state participating in a regional fishery management organization, reflag to nonmember states as a means to avoid fishing restrictions that would otherwise apply.

Second, there is a growing number of newly built, high seas fishing vessels that are registered directly, without any reflagging, in states that are not members of the major multilateral fisheries organizations, precisely because those states in which these vessels are now flagged are not bound by the restrictions adopted by those organizations.

This agreement is designed to address these situations and, more broadly, to bring all high seas fisheries under greater control. This agreement, thus, imposes upon all states whose fishing vessels operate on the high seas obligations designed to make the activities of those vessels consistent with conservation and management needs. And it increases the transparency of all high seas fishing operations through the collection and dissemination of data.

These provisions establish a sound basis on which high seas fishing must be conducted if living marine resources are to be properly conserved, managed, and used sustainably over time.

Implementation of this agreement by the United States will require new implementing legislation. In this regard, the administration has developed the necessary draft legislation and will propose such to the Congress in the immediate future.

This agreement represents one of several steps we must take to strengthen conservation and management measures for living marine resources and to improve knowledge about high seas fishing in general.

Other steps we are taking include the new "Donut Hole" agreement, which we will submit shortly to the Senate for advice and consent. We are working hard in the ongoing U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks to get an acceptable and meaningful result in that context. We are working hard within the FAO on the Code of Conduct for Responsible Fishing. And we are supporting additional efforts in the Atlantic and Western and South Pacific to ensure the sustainable use of the highly migratory species of those regions.

The conclusion of this agreement, however, represents a significant accomplishment in its own right. The agreement will protect the marine ecosystem and further the goal of sustainable use of international high seas fishery resources.

The United States is a member of most of the important international fishery organizations whose members will all be strengthened by this agreement. We stand to benefit considerably from its entry into force.

Accordingly, the administration urges this committee to recommend the agreement for early and favorable action by the full Senate.

Let me turn, Mr. Chairman, to some of the questions you raised about the Law of the Sea.

As you know, the negotiations in New York under the auspices of the Secretary General concluded a few weeks ago with a result that I think it is fair to say the administration deems to be accept-

able. We are now in the process of going through with getting the permission to sign that agreement. And hopefully, shortly, we will be in a position to get those final approvals that the administration must take, and to communicate that to you.

If all goes according to plan, this would put the United States in the position to sign the agreement at the end of July, when it is open for signature in New York.

As you suggested, it will be our intent—again, assuming all of these things fall into place—to bring the amending agreement and the Convention to the Senate before the Senate goes out this year so that they could be considered together early in 1995.

There are still policy-level decisions that have to be made by senior members of the administration about all of this, but I think it is fair to say that that is the basic game plan that we are operating under.

The particular agreement that we are looking at here on high seas fishing is a very important reflection of the importance of the Law of the Sea to the United States and to our interests.

We have in the Law of the Sea Convention what is really the constitution for the use of the world's oceans. That affects fishing operations. It affects marine commerce. It affects our national security interests in the ocean. It affects the use of the oil and gas and other energy resources that we might extract from the oceans. It confirms our national jurisdiction over the fishery resources within 200 miles of our coasts, and the oil and gas resources on our continental shelf. And it makes provision for cooperation in those areas of the high seas that are beyond national jurisdiction.

It is based upon that foundation and the obligation to cooperate in the areas beyond national jurisdiction which are given expression in the agreement we are looking at today. We need to give content to those general obligations to cooperate. And I think that this agreement that we have before us is a very far-reaching agreement that shows how states tend to cooperate as required by the Law of the Sea Convention in the conservation and management of the fish stocks on the high seas beyond national jurisdiction.

Mr. Chairman, I would be pleased to answer any other questions that you might have.

[The prepared statement of Ambassador Colson follows:]

PREPARED STATEMENT OF AMBASSADOR COLSON

I appreciate this opportunity to testify before the Committee in support of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the "Agreement"). The Agreement was adopted at Rome by consensus of the Conference of the United Nations Food and Agriculture Organization ("FAO") on November 24, 1993, as one part of the International Code of Conduct for Responsible Fishing.

I am particularly pleased to report that this Agreement was made possible largely by the initiative of the United States, which began several years ago and continued throughout the negotiating process. The Agreement before you represents one critical element in the efforts of the Administration to bring high seas fisheries under greater control. We urge the Senate to provide its advice and consent to U.S. acceptance of the Agreement so that we may promptly reiterate our nation's commitment to responsible fishing on the high seas and press others in the international community to make the same commitment.

This Agreement is good for the marine environment and good for the U.S. fishing industry. Only through more responsible high seas fishing practices, of the sort required by this Agreement, can we hope to ensure the sustainable use of high seas fishing resources and the livelihoods that depend on them.

Like most international fishery treaties, the Agreement rests upon the legal framework established in the 1982 United Nations Convention on the Law of the Sea. The fishery provisions of that Convention, which in the view of the United States reflect customary international law, contain basic obligations for States whose vessels fish on the high seas to cooperate in the conservation and management of high seas resources. Under the Law of the Sea Convention, Flag States must also ensure that there is a genuine link between themselves and the vessels that fly their flag.

It has become necessary, however, to build upon those obligations in order to address a growing threat to the integrity of multilateral fishery organizations. Fishing vessels flying the flag of some States participating in such organizations have increasingly reflagged to non-member States as a means of avoiding fishing restrictions that would otherwise apply. For example, the United States and other member States of the International Commission for the Conservation of Atlantic Tunas ("ICCAT") have been struggling to adopt measures for the protection of Western Atlantic Bluefin Tuna, the stock of which is severely depressed. The ability of ICCAT to regulate the overall taking of the stock has been undermined by vessels registered in States that are not ICCAT members; some of these vessels may have been reflagged.

Agenda 21, adopted by the United Nations Conference on Environment and Development (UNCED), called upon States to take effective action to deter such reflagging. Other international conferences and resolutions, including the Declaration of Cancun, adopted at a 1992 conference in Cancun, Mexico, echoed this call. Finally, through persistent efforts of the United States, the FAO Council decided in November 1992 to conclude a treaty under FAO auspices on "reflagging" as expeditiously as possible.

In the course of the negotiations that ensued, information became available to show that reflagging was only part of a larger problem. A growing number of newly built high seas fishing vessels are registered directly *(i.e.,* without reflagging) in States that are not members of the major multilateral fisheries organizations, precisely because these States are not bound by the restrictions adopted by those organizations. Accordingly, the United States and the other nations that participated in the negotiation of the Agreement decided to expand upon the original concept for the purpose of addressing the problems caused by this practice.

The Agreement that resulted has two primary objectives: (1) to impose upon all States whose fishing vessels operate on the high seas obligations designed to make the activities of those vessels consistent with conservation and management needs; and (2) to increase the transparency of all high seas fishing operations through the collection and dissemination of data. Thus, while the Agreement is still sometimes referred to as the "Flagging" or "Reflagging" Agreement, these are essentially misnomers. The actual Agreement deals with a broader range of issues, which I would now like to summarize. For a more thorough review, I would refer the Committee to the article-by-article analysis of the Agreement contained in the Report of the Secretary of State to the President as part of the transmittal documents.

The most important obligations for Parties whose fishing vessels operate on the high seas are set forth in Article III of the Agreement. Such Parties must—

(1) ensure that such vessels do not undermine international conservation and management measures (¶1);

(2) prohibit such vessels from fishing on the high seas without specific authorization from the appropriate authority of the Party (¶2);

(3) not issue such an authorization unless it can exercise responsibility with respect to such vessel (¶3);

(4) not issue such an authorization to a reflagged vessel that has previously undermined the effectiveness of international conservation and management measures, unless certain conditions are met *(e.g.,* real change of ownership and control) (¶5);

(5) ensure that such vessels are marked in accordance with recognized international standards (¶6);

(6) ensure that such vessels provide to it sufficient information on its fishing operations (¶7); and

(7) take enforcement measures in respect of such vessels that contravene the requirements of the Agreement (¶8).

Taken together, these obligations establish a sound basis on which high seas fishing must be conducted if living marine resources are to be properly conserved and managed. They also stand for the proposition that no State should allow a fishing vessel to fly its flag on the high seas unless the State can effectively exercise responsibility over that vessel.

The Agreement also requires Parties to provide to the FAO pertinent information relating to its fishing vessels that operate on the high seas. The FAO will maintain and circulate this information among the Parties and, with certain exceptions, to regional fisheries organizations. Each Party must also provide information to the FAO relating to activities by its vessels that contravene the provisions of the Agreement, as well as measures the Party has taken in response. These provisions are designed to increase our knowledge of high seas fisheries, which is essential in the development of effective conservation and management measures.

Implementation of this Agreement by the United States will require new legislation. In this regard, I am pleased to inform you that the Administration is developing the necessary draft legislation and will be in a position to propose such legislation to Congress soon. While we seek Senate advice and consent to accept the Agreement expeditiously, we would expect the deposit of the United States instrument of acceptance for the Agreement to be made contingent on the passage of such implementing legislation.

As I mentioned at the outset, this Agreement represents one of several steps we must take to strengthen conservation and management measures for living marine resources and to improve knowledge about ocean fishing in general. In response to the collapse of the pollock stocks in the Bering Sea caused by foreign overfishing in the "Donut Hole," the Administration recently concluded the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, for which we will shortly be seeking Senate advice and consent to ratification. We are also actively pressing for a successful outcome to the on-going United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as the development of other parts of the FAO Code of Conduct for Responsible Fishing.

The conclusion of this Agreement, however, represents a significant accomplishment in its own right. The Agreement will protect the marine ecosystem and further the goal of sustainable use of fishery resources. The United States, as a member of most important international fishery organizations whose measures will be strengthened by the Agreement, stands to benefit considerably from its entry into force. Accordingly, the Administration urges this Committee to recommend the Agreement for early and favorable action by the full Senate.

Thank you very much. I would be pleased to try to answer any questions you might have.

The CHAIRMAN. Thank you very much.

I realized you touched on this, but could you just go once again through the nature of the reflagging problem, giving us a specific instance of it? What we are trying to do here is build up a record so that when the time comes to debate the issue we will know.

Ambassador COLSON. Mr. Chairman, this was recognized in the runup to the Earth Summit in 1992 at Rio as a growing problem in the international community, where vessels whose countries had been participating in an international organization began to be reflagged simply to avoid being regulated by their country as required by the international agreement.

This was a big problem, and remains a large problem in the North Atlantic Ocean, where many of the members of the international convention called NAFO—European countries—have found their vessels, the businessmen that own those vessels, going to flag-of-convenience states, getting those vessels reflagged, and still participating in the North Atlantic fisheries without any regulations on them because the flag-of-convenience countries are not able to do that.

It has also been a problem of significance in dealing with Atlantic salmon, where several vessels have been fishing in the North Atlantic for salmon, contrary to all of the principles of conservation and management of Atlantic salmon, contrary to provisions of the relevant international agreements. And what this agreement will do is help the international community get a better handle on the traditional practice of shifting of flags on vessels.

What we are seeing now is that businessmen are doing it simply to avoid having conservation rules imposed on them. We see it also to some extent in fisheries that are related to the Atlantic Tunas Convention, where there are a number of fishing operations which are going on in the high seas area of the Atlantic Ocean for tuna fishery resources, where the vessels that are involved in those fisheries are not participating or their countries are not participating in any international organization.

The CHAIRMAN. What would be a specific example to cite of a country and the description of the vessel?

Ambassador COLSON. Well, we could give you quite a list, I think. One that comes to mind—there are several notorious cases of vessels being reflagged in Europe, in some of the Eastern European countries, to avoid the regulations of the North Atlantic Salmon Conservation Organization. These have been vessels that had been primarily flagged in Poland, and Poland is not a member of that organization.

There have also been vessels participating in the salmon fisheries in the Atlantic that have been flagged in Panama and in Belize. And we need to have a mechanism, which this Convention gives us, to manage that problem.

There have been a number of European vessels, primarily out of Portugal and Spain as I understand it, that have gone to small Latin American countries and are flying the flags of those countries in the North Atlantic region. And those countries are not participating in the North Atlantic Fisheries Organization.

The CHAIRMAN. Would any of these flags be from countries with no shoreline at all?

Ambassador COLSON. Well, it is certainly possible. It is possible to have a landlocked country such as Switzerland and Austria flag commercial vessels.

The CHAIRMAN. Which U.S. agencies will be responsible for enforcing the agreement? I am particularly interested in the role of the Coast Guard in this regard.

Ambassador COLSON. As in most of our fisheries agreements, the Department of Commerce and the Coast Guard will have responsibilities for enforcing the implementing legislation that will be put together. As I mentioned, this will be submitted shortly by the administration to the Congress for enactment.

It is, again, the regulatory authority that is normally given to the Secretary of Commerce through NOAA and the National Marine Fisheries Service to implement the regulations, and the Coast Guard and the enforcement authorities of the National Marine Fisheries Service then have a dual responsibility to enforce those rules.

The CHAIRMAN. I think I am correct in saying that the Commerce Department has a certain fleet of vessels of their own. Will they be involved in the implementation of this treaty?

Ambassador COLSON. No. The Commerce Department—those Government vessels, of course, will have responsibilities, as all in the Government will have, to abide consistently with these agreements. But those will not be fishing vessels that would be subject to the provisions of this particular agreement.

The CHAIRMAN. I am thinking of the responsibilities of enforcement of the treaty.

Ambassador COLSON. Yes.

The CHAIRMAN. I imagine that the Coast Guard will assume responsibilities; will the ships under NOAA have a responsibility?

Ambassador COLSON. Not directly. They could be given responsibility to report on fishing vessels they encounter in areas of special interest on the high seas while underway conducting their primary survey or marine science activities.

The CHAIRMAN. Just to educate me, what is enforcement? Does that mean having a gun?

Ambassador COLSON. As a practical matter, for the high seas areas where there are U.S. interests, it means having a Coast Guard cutter. Not only are those cutters armed, but their officers have broad Federal law enforcement authority under 14 U.S.C. 89 as well as the Magnuson Act. It could also include NMFS enforcement agents if they happened to be embarked on a Coast Guard cutter.

The CHAIRMAN. What would be the position of the fishing industry with regard to this treaty? Are they generally supportive or opposed? What is their position?

Ambassador COLSON. We have consulted with them throughout the negotiation. I think it is fair to say that they are supportive in that they recognize more than perhaps they did some years ago the importance of strong conservation and management measures on the high seas. They see themselves, the U.S. industry, generally well-regulated by the United States. They see other countries not so well-regulated. And I think the sentiment generally in the U.S. industry is that they want to see other fishermen on the high seas regulated, as our fishing industry is regulated, to ensure the conservation of those resources.

The CHAIRMAN. Were they consulted with respect to this treaty?

Ambassador COLSON. When you say "the fishing industry," it is such a diverse industry; it is very hard to say that everyone in the U.S. fishing industry was consulted. That is not the case. But we have certainly mentioned this and talked to large segments of the fishing industry.

The tuna industry, of course, is the industry that is most likely to be affected, because they are the ones that are in competition for most of these high seas fishery resources with other countries. And I think it is fair to say that they are generally comfortable with the way that this agreement would approach regulating them. Because they see benefits in getting controls over other countries that are competitors with them in high seas fisheries.

The CHAIRMAN. I think article XII of the agreement permits states to make reservations to the agreement upon acceptance. But it also provides that a state making such a reservation cannot become a party unless all the other parties unanimously accept that reservation.

That seems a substantial departure from the Vienna Convention on the Law of Treaties. What is the rationale for the way in which this provision is structured?

Ambassador COLSON. Mr. Chairman, this provision for many years has been used in treaties that are negotiated under the aus-

pices of the Food and Agricultural Organization of the U.N. In the negotiations on the agreement, article XII represents a compromise between those who insisted that no reservations be allowed and those countries who wanted a very flexible reservation type of regime in the agreement

I think that is the explanation. Certainly the administration is not intending to propose any reservations or understandings or other conditions associated with our participation in this Convention.

The CHAIRMAN. So, the administration does not recommend that we adopt any other reservations, understandings, or conditions to the ratification of this treaty?

Ambassador COLSON. That is correct, sir.

The CHAIRMAN. But if any other nation does, as I understand this procedure, we would have to be informed?

Ambassador COLSON. We would have to be informed and concur.

The CHAIRMAN. And concur; right.

What implementing legislation does the agreement require from the United States?

Ambassador COLSON. We will have to have implementing legislation that I would call the traditional kind of implementing legislation we normally have with international fishing conventions to which we are a party to in order to ensure that U.S. fishing vessels are regulated consistent with the international undertakings that we take on under the agreement.

As I mentioned, that has been drafted. It is in the final stages of the OMB clearance process. And I would assume that we will submit it shortly to you for action by the House and the Senate if that is the Congress' wish.

The CHAIRMAN. How does the proposed treaty address the noncompliance of states which are not parties to the current international fisheries organizations? If they are outside of the organizations, will not the same states simply choose not to become parties to this as well and continue as they are doing?

Ambassador COLSON. Well, Mr. Chairman, that is the key question. It is a key factor that we have to make this agreement work. We have to get those countries into those organizations and into this Convention.

This is one of the reasons why we chose to negotiate this under the auspices of the U.N. Food and Agriculture Organization. We felt that using that forum, which is a forum that many of the developing countries have more confidence in—would give us a better chance of getting a lot of the small countries that are often used as flag-of-convenience countries to ratify this agreement.

Certainly it is important, first, for the major states—like the United States, Japan, China, and the European countries—to accept the obligations of this agreement. And I am quite confident that if we are able to do that and show to the countries concerned—such as many of those that are used for flag-of-convenience purposes—that we will have some diplomatic success in getting them to take on these obligations.

But this is the foundation. This agreement is what we need in the first instance to get them to make these commitments. And it was a negotiation that was conducted in, shall I say, a friendly

forum to them. They participated in it. And I am confident that with a strong diplomatic initiative, following U.S. acceptance of this agreement, we will be in a good position to diplomatically convince many of these countries to also join with this agreement.

The CHAIRMAN. What would be the definition of the high seas? Would that be beyond the 200-mile economic zone?

Ambassador COLSON. Yes, sir, beyond the 200-mile zone. There are some states that have not claimed 200-mile zones. So, the high seas will begin beyond their territorial sea. This is largely in the Mediterranean Sea area where states have chosen not to claim 200 mile zones presently, because of all of the boundary problems that would exist in the Mediterranean. To date, they have chosen not to exercise their right to have extended fisheries jurisdiction.

So, in those kinds of areas, the high seas would be beyond the territorial sea. But, for general purposes, it would be beyond the exclusive economic zone. Certainly for the United States it would be that area beyond our exclusive economic zone.

The CHAIRMAN. What about in the Caribbean, where you have the islands? Would that be considered the high seas, or would that be within the exclusive economic zone?

Ambassador COLSON. Most of the Caribbean is covered by exclusive economic zones. I think all of the Caribbean states have declared 200-mile zones. So, as a practical matter, all of the Caribbean is covered by 200-mile zones of one sort or another.

The CHAIRMAN. So, this treaty does not apply to any fish caught within the economic zone?

Ambassador COLSON. Correct, it does not. The coastal states have the authority to regulate any fishing activity in the 200-mile zone. This is an agreement to regulate activity in areas outside of national jurisdiction.

The CHAIRMAN. What international fishing conservation and management regimes are currently in place? That is a pretty broad question; I realize that.

Ambassador COLSON. Yes, there are a large number of international fishery conservation organizations. I might miss some, but certainly there is the Northwest Atlantic Fisheries Organization. There is the International Convention for the Conservation of Atlantic Tunas. There is the North Atlantic Salmon Conservation Organization. There is the North Pacific Anadromous Fish Commission.

Soon we will have a Convention that covers the high seas area of the Central Bering Sea if the Senate concurs in the agreement that has been negotiated. There is the InterAmerican Tropical Tuna Commission. There are a number of agreements that the United States is not party to in the area around Australia and New Zealand. And there are others in the Indian Ocean that we are not party to.

But, virtually, the entire world has a regional organization of some sort that is supposed to be managing the high seas fisheries in a particular region.

The CHAIRMAN. Would that include the seas in the north, the Antarctic Sea, and the Arctic?

Ambassador COLSON. Yes. I failed to mention that.

One of the most important international conservation regimes that deals with fisheries is the Convention for the Conservation of Antarctic Marine Living Resources, which covers the whole area of Antarctic waters, up to the Antarctic convergence. And this is a very important agreement because it was the first agreement that used an ecosystem management approach to the management of the living marine resources in that area.

And, again, it is an area which we want to have states obligated not to fish in that region unless they do so consistent with the undertakings of the CCAMLR Convention.

The CHAIRMAN. I want to be sure I heard this correctly. You say that in the Mediterranean Sea there would be no high seas fishing?

Ambassador COLSON. No, that is not quite what I meant, Senator. In the Mediterranean, the states, exercising their own sovereign rights, have chosen not to declare 200-mile zones. So, much of the area in the Mediterranean is technically high seas, even though it could be within someone's 200-mile zone if they declared it.

So, for that reason, this agreement will apply in the Mediterranean in certain parts and within geographical areas within 200 miles of the coast. It will apply in parts of the Mediterranean Sea in those areas where the states have not chosen to declare 200-mile zones.

The CHAIRMAN. The reason I was personally curious about it is that almost 50 years ago I had the responsibility for the rehabilitation of the Sicilian fishing industry as a means of bringing food into the populace, saving our vessels for munitions and other supplies.

How important were the principles of the LOS, the Law of the Sea Convention, to the successful negotiation of this treaty?

Ambassador COLSON. Mr. Chairman, they were very important. I think it is a fair statement to say that virtually every international negotiation that relates to the use of the oceans starts with the foundation of the Law of the Sea Convention. It is the Bible. It is the constitution. It is where you start.

There are many points of detail that are not included in the Law of the Sea Convention which need to be further elaborated in agreements such as this one.

When the Law of the Sea Convention says that states shall cooperate in the management of straddling stocks outside of the 200-mile zone, you have to give content to what those words of cooperation mean. And that is what we have done with this kind of agreement.

But certainly the starting point is the principles of the Law of the Sea Convention. And I think one of the important reasons that we need to be party to the Law of the Sea Convention is to ensure that the framework of the Convention stays in place as we begin to look at the entry into force of the Convention.

The CHAIRMAN. Also, in rather broad terms, what are the national interests of the United States that are protected by this treaty?

Ambassador COLSON. I have just spent 3 years working on the Convention that relates to the Central Bering Sea. We have negotiated it with the five other countries that are involved in the fish-

ing operations there right now. These include the United States and Russia, Poland and China, and Korea and Japan. I think we have a good agreement, and we will be submitting that agreement shortly to the Senate for advice and consent.

But the question arises: What happens if a vessel from the European Community decides to go fishing in the area that we have covered now with our six-country agreement? How do we deal with that kind of fishing practice? How do we deal if a vessel from Panama suddenly shows up in the Central Bering Sea, fishing on stocks that we have conservation and management responsibilities for?

I think this new agreement gives us the answer to those kinds of questions and gives us the foundation and the framework within which to work to solve those problems. And I think we can go through all of the regions in which the United States has fishery interests and demonstrate the importance of ensuring that every country and every fishing vessel that participates in a fishery in which the United States has an interest is part of the conservation measures that are adopted by the regional organizations that have been set up to manage the resources.

The CHAIRMAN. I think article 2 of the agreement permits states to exempt fishing vessels of less than 24 meters from the agreement's requirements. How was that figure determined? And would that exempt a large number of existing fishing vessels?

Ambassador COLSON. First, let me note that the agreement only allows parties to exempt vessels of less than 24 meters from some of the requirements, not all of the requirements. They can only exempt them from some of the administrative requirements. The parties must ensure that all of their high seas vessels, including those that are less than 24 meters, do not undermine international conservation and management measures. And they must take enforcement action against such vessels that do not comply.

The 24-meter length is a compromise. It is a balance between covering as many vessels as possible without posing insurmountable administrative obstacles for some of the states. As a reference point, certain of the IMO, International Maritime Organization, treaties relating to vessel safety have also adopted the 24-meter length as a cutoff.

The CHAIRMAN. Roughly, do we have a census of how many vessels would be covered?

Ambassador COLSON. I do not believe that there is a consensus as to how many—I do not know that there has been an effort to identify how many vessels around the world will be covered by this agreement. But it will be substantial.

But this is one of the things that we will find out, because each state that authorizes a fishing vessel to fish on the high seas will have an obligation to report that information to FAO, one of the things that we are going to get out of this agreement are the answers to those kinds of questions. We are going to know more about the kinds of fishing operations that states conduct on the high seas.

The CHAIRMAN. This is a specific question about the definition of the high seas. Are you familiar with the island of Rockall off of Iceland?

Ambassador COLSON. Yes, I am.

The CHAIRMAN. Does it have the right, because it has a British flag on it, would that make the 200-mile area around Rockall subject to the economic zone of Great Britain?

Ambassador COLSON. I think the answer is—there are two parts to an answer to that question. It has been U.S. practice in our own 200-mile zone to use all of the islands and rocks and keys of the United States to draw 200-mile zones from those areas, no matter where they have been around the world. So, consistent with that practice, we would not object if a state with sovereignty over Rockall was to declare a 200-mile zone off of Rockall.

Now, the question that arises with respect to Rockall is that there is a dispute between the United Kingdom and I believe Ireland and Iceland over really who has sovereignty over that large rock in the North Atlantic.

The CHAIRMAN. So this remains to be decided then?

Ambassador COLSON. It remains to be decided. I think our position would be that there could be a 200-mile zone around that island. But, right now, we do not know—there is a dispute over who would have the sovereign rights in that 200-mile zone.

The CHAIRMAN. One other point which I do not understand is why do we use meters when you determine the length of the vessels but miles when you are doing the distances from the shore? Is that not mixing apples and oranges? Should it not be all metric or all the British system?

Ambassador COLSON. I think international practice is to use nautical miles, and we may have used shorthand here. But I think in most of the international practice, and certainly our Law of the Sea Convention, when we are talking about distances from shore we are talking about nautical miles.

It is one of those inconsistencies, I suppose, Mr. Chairman, of life that we live with.

The CHAIRMAN. Thank you very much.

I will turn now to Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate your accommodating me.

I had one of those hectic mornings. I have just a couple of questions relative to the advancements that we have made in eliminating the driftnet fleet from the high seas moving into northern waters and picking up salmon and so forth.

As I understand it, this treaty does not relate to those non-U.N. members—for example, Taiwan; is that correct?

Ambassador COLSON. That is correct.

Senator MURKOWSKI. And Taiwan previously has been involved in some violations, where they were actually apprehended on the high seas. And we had a long chase on one occasion.

Now, have we not seen some of the vessels either from Japan, Korea, or Taiwan that have been reflagged and are operating illegally to some extent? Did we not have a report the other day regarding some vessel activity that we have not been able to identify?

Ambassador COLSON. That is correct, Senator. There is one incident which is an ongoing case really, where a Canadian flight has identified a vessel that appears to be equipped with a driftnet in the North Pacific Ocean. But, as these things go, you know better

than I the distances involved. They have not been able to keep track of this vessel, but they are looking diligently for it.

When the vessel was sighted, it was not fishing, but it did appear as if there was a driftnet on the deck of the vessel. That is one of the reasons why we are being vigilant in this area. We are making sure that the people involved in illegal fishing operations know that we are going to be very watchful, particularly in that part of the world, to ensure that driftnet fishing does not start up again.

Senator MURKOWSKI. You want to encourage countries with high seas vessels to report to the FAO and the U.N.?

Ambassador COLSON. Yes.

Senator MURKOWSKI. I mean that is voluntary, is it not?

Ambassador COLSON. It is voluntary now, but one of the things that this agreement will do is it will ensure that all vessels that are licensed to fish on the high seas—and there will be an obligation of a state to license a vessel to fish on the high seas—are reported to the FAO and a registry will be kept so that we will know. And they will have to have their markings and it will be regularized about how these vessels appear on the high seas.

Senator MURKOWSKI. Who do we suspect may be problem nations that would perhaps not have enforcement or the licensing capability or allow some reflagging to enter into it? Would North Korea, for example? And what do we do about it?

Ambassador COLSON. I think, Senator, the problem has arisen because the reflagging operations in the traditional flag-of-convenience countries. And I think, in the first instance, those are the countries that we are working on. We have diplomatic initiatives going with those countries to encourage them to join this new agreement which will oblige them to either control the operation of those fishing vessels or to get out of the business of flagging them. So, that is the first effort.

Now, there is always the possibility that we could see these sort of operations shift and we could get a North Korea or Iraq or some country like that involved and have a different kind of problem. But the thing we are up against is that we are trying to balance the traditional use of a nation-state's flag on the high seas and its rights to fly that flag on its own vessel on the high seas with the need to provide for rational conservation agreements. This is the first effort really by the international community to try to get a handle on that problem. And I think it is a good start.

We cannot answer all of the questions about: "how is this going to play out over time?" But I am confident, if the major countries ratify this agreement, that we will have significant success in convincing many of the flag-of-convenience states to either get out of the business of flagging fishing vessels on the high seas or, alternatively maybe, begin to manage them more responsibly.

And I would note that there are some—there is at least one flag-of-convenience country that I am aware of which does a very good job of managing a fishing fleet, and that is Vanuatu. They do an excellent job of managing a flag-of-convenience fleet. And it is quite an unusual situation.

Senator MURKOWSKI. Let me ask you one more question and then I will turn to another subject. It is relative to what you indicated with regard to the treaty. As I understand it, the individual

countries would license—that is they would basically have control of their own vessels—but they would be bound by a treaty to certain specifics like reporting to the FAO and determining that officially they would not reflag and allow their vessels to enter into an illegal operation?

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. If such a country then violated the treaty, would they become subject to action under the Pelly amendment?

Ambassador COLSON. Well, I suppose technically, Senator, they would not be bound by the Pelly amendment, but it certainly would be something that we could choose to use against a country that was not complying with its obligations under this agreement or for a nonparty to this agreement that was acting in a manner that would undermine this particular agreement. That would be our choice and our discretion to use the Pelly amendment in those kinds of circumstances.

Senator MURKOWSKI. Turning for a moment to the U.S. and Canada salmon crisis which we are involved in now, do you know if our position is that we will re-enter into negotiations with Canada only if the Canadians drop their current assessment of $1,100 on our boats? Or is it possible that we may enter into negotiations with the understanding that the levy would still be applicable?

Ambassador COLSON. There is a very strong sentiment that we would only return to the table after the Canadians rescind this fee. That is my understanding of the way that this has been communicated.

I think it is important to keep all of our options open on this question because it is something that we want to resolve. But one of the things that we have got to get done is to get this fee lifted. So, I think that the sentiment that has been expressed from the Congress and certainly the sentiment in the administration is one that the fee has got to come off first before we get back to the bargaining table.

Senator MURKOWSKI. It is my understanding that our position is that this is basically an illegal act by the Canadian Government. There have been references to fishing agreements that would make this an illegal fee. So, I assume the basis for us not entering into negotiations until the fee is dropped is that we consider it an illegal act?

Ambassador COLSON. That certainly is our position. I have said it to you publicly, and I do not think there is any question about the fact that it is an illegal act.

Senator MURKOWSKI. What was the response of the Canadians after the meeting between Vice President Gore and the Canadian Ambassador to the United States? The weekend has passed now, and I think that may have taken place as late as last Thursday, so they have obviously had time to respond. I am not aware of what their response was.

Ambassador COLSON. Senator, there was not a response, per se. There was communication yesterday with the people at the White House that raised—I can only characterize it as some unclear questions about what it was that the Vice President had said to the Canadian Ambassador here. And it is my understanding that what

the administration will be saying back to Canada today is simply to restate what the Vice President said.

Senator MURKOWSKI. It is my understanding the Vice President was pretty tough and consistent, and that we deem this to be an illegal action. I guess we are going to have to wait for the nuances to be considered a little further before we get down to any serious negotiation. Of course, in the meantime, the fish are not waiting for this discussion to resolve itself. They are running now, right?

Ambassador COLSON. That is correct.

Senator MURKOWSKI. So, I assume in about 6 or 8 weeks, this whole process will be academic as far as the fish are concerned; we will have all winter to negotiate?

Ambassador COLSON. That may be one of the ways of getting through this problem right now.

Senator MURKOWSKI. As I am sure the chairman is aware, the Canadians have embarked upon an effort to require all fishing vessels that move from Puget Sound and the States of Oregon and Washington to Alaska through the inside passage of Canada to pay $1,100 for transitting. We have always considered this movement to be a right of free passage. And of course they are doing this to leverage action on the Pacific Salmon Agreement, which is a very complex issue as to who is catching whose fish.

You have been negotiating this for an extended period of time and, without going into specifics—you know, the result of this is that you are going to have to go back to those same Canadians at some point in time.

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. Do we have enough sound biology—that is, enough research—to substantiate our position? I cannot recall it from memory, but it is my understanding that Alaska has reduced its take of king salmon to allow more of the king salmon to move down the coast. And those king salmon, of course, are exposed to the sport fishery in Canada, which is at least two salmon a day. I see the resorts are advertising, "come to Canada and catch four salmon a day."

Our sports lodges are limiting fishermen to one king salmon. Of course, that is a process of allocation, where we set our own allocation between sport and commercial users. But we are in a situation where we have record harvests 7 out of the last 11 years in Alaska, primarily of our own anadromous fish. When we were under Federal management prior to 1959, we were running 30 million or 40 million fish a year and went as low as 25 million. Last year we had 192 million fish, an all-time high. So we think we are doing something right in managing the resources, to judge by having record catches in 7 of the last 11 years.

Our concern is that, to some extent, Washington and Oregon traded off fish for the Columbia Snake River dam system—10 or so major dams—gaining the prosperity of agriculture and cheap power, aluminum, Boeing and so forth. It is pretty hard to have it both ways—to rebuild those runs, because of the problem of the fry going through the turbines and losing so many of those fish.

To a large degree, treaty actions must be based on sound scientific fact, as much as we have it.

Are you satisfied that we have enough evidence to substantiate that decisions are being made on that basis rather than on emotional tirades from one side or the other, or both? How good is our science? How good is the Canadian science?

Ambassador COLSON. Senator, I think the science is pretty good. In fact, if we compare this to a lot of the other international fishery programs around the world, one of the problems is here we are overwhelmed by paper. We are overwhelmed by science. We are overwhelmed by a half a dozen different scientific opinions about any particular aspect.

This was illustrated to me a few weeks ago when I was out in Oregon talking to fishermen, and the current controversy was whether or not the spill that was ordered by NMFS over the dams a few weeks ago, actually killed fish or did not kill fish. And here you have, based upon the same event and the same facts and knowledge that came out of it, there is one community of thought that 85 percent of the fish that went over those dams were killed and another school of thought that said none of them were killed.

There is no way of resolving those kind of debates once the scientists sort of take a position one way or another based upon what interest they are supporting. It might be fair to say that all of the information here is coming out of a group that has a policy interest in the way these issues are handled. And because of that, we get tied up in a lot of scientific debate that is unresolvable by policy people.

Senator MURKOWSKI. That is too bad, because if you cannot depend on knowledgeable people that are experts in their field, and if their opinions vary to the degree that somebody says they are all being caught in the turbines and somebody else says none of them are, why, that is really unacceptable to us from our point of view. We have got to be able to hold those knowledgeable people accountable. It is pretty hard to do, but it should be done.

Ambassador COLSON. I agree.

Senator MURKOWSKI. Now, the interception of the Fraser River salmon—an awful lot of that fishery I understand is in the San Juan Island area, which is right at the boundary of Washington and Canada. So there is an intermingling. And that is the Fraser River run of red salmon, right?

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. And the Canadians are upset about that?

Ambassador COLSON. Amongst other things, yes, sir.

Senator MURKOWSKI. And that is part of the issue of the equity. They say we have to resolve this issue. And their proposal to resolve it is what?

Ambassador COLSON. Well, I think that they look around and see—they look at this in absolute numbers. They see the United States catching more Canadian-origin salmon than Canada is catching of U.S.-origin salmon. That is not in and of itself a new fact. The real matter of debate is whether the two sides are getting the benefit of their salmon production. The treaty does not talk about getting the same numbers of fish back or that there has to be a balance in the numbers of fish that are produced.

As you know, salmon have different values, depending on what kinds of fisheries they are going into and what kind of species you

are talking about. There are different values in recreational and commercial fishing. There are different values within commercial fisheries. That is why the equity issue has been so hard, because you have to quantify in some manner all of these benefits that both sides are getting.

Canada sees the United States, however, catching a lot of Canadian sockeye, both in southeast Alaska and in Puget Sound. And it is their contention that there is not a balance, shall we say, in Canada's catch of U.S.-origin fish in the various fisheries that they have—primarily a commercial fishery on the west coast of Vancouver Island and in those recreational fisheries that catch Washington and Oregon chinook and coho. So from their perspective they see declining production of Washington and Oregon chinook and coho, which means that there are fewer U.S.-origin fish for Canada to catch. And they see U.S. catches of Canadian sockeye that are stable or increasing. That, in my mind, is the essence of the present problem.

Senator MURKOWSKI. The Native Americas take for subsistence—that is, the traditional use—is it basically unregulated to a degree in the State of Washington under the Boldt decision?

Ambassador COLSON. No, Senator. The tribal fisheries in Washington State are largely large-scale commercial fisheries. It is a major commercial fishery in Washington State that the tribes prosecute. There are ceremonial and subsistence fisheries that do occur in Washington and Oregon, but they are a really very small part of this overall puzzle. They are very important to the people concerned though.

Senator MURKOWSKI. Now, the Boldt decision basically said that the tribes in the State of Washington would be entitled to 50 percent of the commercial harvest of the fish that go into the State of Washington to spawn, is that about it?

Ambassador COLSON. I cannot perhaps state it precisely, but the tribes are entitled to 50 percent of the fish that would normally come by their usual and accustomed fishing grounds. So this includes fish that might be caught in recreational fisheries as well, if those fish would have come past a tribal fishing ground. The 50–50 accounting formulas, which are very complicated, have to take into account all of that.

Senator MURKOWSKI. Now, that has been applicable only to the State of Washington?

Ambassador COLSON. Well, you may recall, Senator, that in 1985, when this treaty was consummated, one of the issues at that time was that the tribes had brought something called the all-citizens lawsuit. And this was a lawsuit that was basically seeking to extend the principles of the Boldt decision to the fisheries in southeast Alaska, where Alaskan catches—Alaska might be catching fish that would have gotten back to those usual and accustomed fishing grounds in Washington and Oregon. And that all-citizens suit was related to chinook or king salmon.

One of the elements of the package that was put together in 1985 was that that suit was settled. And the settlement is written into the implementing legislation that the Congress passed. But during the last 9 years, one of the things that we have found that was not understood in 1985 was that some Fraser River sockeye in some

years are present in southeast Alaska fisheries. And those fish, if they were not intercepted in Alaska or in northern British Columbia, would have gotten back to Puget Sound and go by the usual and accustomed fishing grounds in Puget Sound.

So, there is consideration in the tribal community—that I am not involved in—but there is consideration of the tribes reinstituting—reinstituting is probably the wrong legal word—but that that lawsuit may go forward this fall relating to sockeye. It is a different suit than the all-citizens suit, but it essentially raises the same legal issues and complications.

Senator MURKOWSKI. I have one other question relative to the negotiations. You function under the State Department auspices.

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. We have got the White House involved now because the Canadian Ambassador I guess came to the White House.

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. When we go back to the actual negotiation, who is going to be negotiating?

Ambassador COLSON. Well, the Vice President has said that he is going to stay involved in this until it gets sorted out. So my assumption is that, one way or the other, he is going to have some continuing oversight, and how he chooses to manage a negotiating process is largely going to be up to him and the President. I do not know how they will choose to handle it. I work for them.

Senator MURKOWSKI. But can you explain—when you negotiate, you have a staff and you do a lot of research, and you are negotiating on the basis of material that has been accumulated?

Ambassador COLSON. Well, the way this has normally been conducted is that we have the Commission that is set up by the implementing legislation in the treaty, and there is a large contingent of Alaskans and there is a large contingent from Washington and Oregon, and there is a large contingent from the tribes, and there is a very small contingent from the Federal Government, frankly. And we try to work and bring together the various U.S. interests, basically playing the role of a conciliator and a spokesman. And we try to put together a position that all of those interests in the U.S. community can support.

One of the difficulties that we have encountered in the last year or so—it has been very difficult because of the pressures on these various groups to get one U.S. position out of that process. And, as you know, there are some people thinking about whether that process should be changed in some fashion.

I think, at the end of the day, everybody has got to be cooperating with one another and putting this together in some way that makes sense for Alaska, Washington, Oregon, and the tribes.

Senator MURKOWSKI. I assume that the Canadians are aware that if they do not negotiate and they do not drop this transit fee, we are in a position to retaliate to some extent if we wish? I assume we could require them to clear customs if they come into our waters. They fish in Dixon Entrance and then come into the Cape Muzon area to anchor at night, and they run clear across to the other side. We have not traditionally required them to clear cus-

toms, which means probably another 4- or 5-hour run before they come into Ketchikan.

The Stikine, the Iskut, the Taku, the Chickamin, and the Unuk Rivers all enter into southeastern Alaska, but there are Canadian fisheries above the boundary in some of those areas. We could retaliate in a manner associated directly with the fisheries rather than reach out with something like a transit fee.

Are they aware of that?

Ambassador COLSON. Well, I am confident—I have not spoken to the Canadians about that specifically, but I have certainly read all of those thoughts in our press and their press. So I am sure they are aware of it. And I am sure they are aware that there are other things the United States might consider if we do not get this sorted out in a reasonable way and in a short period of time.

Senator MURKOWSKI. Is there a time and place for that in your opinion, if we do not get anywhere on our negotiations and they continue to maintain the transit fee of $1,100?

Ambassador COLSON. Well, I think that, as you mentioned, the Vice President gave them a fairly firm message, which indicates that the administration is committed to working this through.

Senator MURKOWSKI. I am sorry, I was interrupted.

Ambassador COLSON. All I was saying was that, as you mentioned, the Vice President gave the Canadians a firm message. And I think that reflects the commitment of the administration to work this thing through and to get it resolved.

Senator MURKOWSKI. Yes, but in the meantime, we have already lost 5 days as the participants just try to communicate on their understanding of the language evidently. My briefing from the administration was very reassuring, that we were making demands that we go back to the negotiating table. And now we are back discussing what that message was.

Ambassador COLSON. I cannot fill you in any more, Senator. I was not directly in those conversations. But I am comfortable that the administration and the political people that are handling this right now in the White House are handling it well. And I am confident they will continue to handle it well.

Senator MURKOWSKI. Well, I do not dispute that. I think they have handled it well. But I think the Canadians—I cannot understand how they misunderstood the Vice President's message.

Ambassador COLSON. I cannot either. I have been surmising that myself. I can only assume that in the translation between people who perhaps are not conversant with these things, and writing them down and having them misinterpreted by other bureaucrats and other politicians, and by the time it weaves its way back down to the person for whom the message was really intended in the first place, it is not exactly clear what the message says. I think that happens sometimes in this business.

Senator MURKOWSKI. As you can tell by some of my questions, I have been waiting for something to arrive and it has finally arrived. I would like to know if this is generally accurate in your opinion. I think it is fair to say that we are aware that catches of salmon off southeastern Alaska appear to some extent to be one of the Canadians' prime concerns. And it seems to be a sticking point in the equity issue.

But does not Canada catch a substantial amount of Washington-origin coho and chinook off Vancouver Island?

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. And that is an increasing concern in Washington as the stocks have declined.

Ambassador COLSON. Yes, sir.

Senator MURKOWSKI. I am told that tag returns indicate that 55 to 70 percent of the coho produced in Washington are taken by Canadians.

Ambassador COLSON. I am not sure that that is the right way of stating those percentages.

Senator MURKOWSKI. Well, it sounds pretty clear.

Ambassador COLSON. I think it is more that 55 to 70 percent of the coho taken on the west coast of Vancouver Island are Washington and Oregon fish, which is different.

Senator MURKOWSKI. I am asking if those are taken by Canadians.

Ambassador COLSON. Yes.

Senator MURKOWSKI. You are couching that a little bit.

Ambassador COLSON. Well, I just think that the way the—whatever that quote is, it is saying that 55 to 70 percent of the fish produced by Washington are taken by Canadians. I do not think that—I may be wrong, but I do not think that is accurate. I think it is that 55 to 70 percent of the coho taken on the west coast of Vancouver Island are U.S.-origin coho, which is a different thing.

Senator MURKOWSKI. I would appreciate it if you could provide that for the record, because I think it is fairly significant as we point the finger back and forth of who is catching whose fish. Because this material indicates that 55 to 75 percent of the coho produced in Washington are taken by Canadians, as well as a small portion of the economically weak Snake and Columbia River chinook runs.

[The information referred to follows:]

The 55–75 percent figure cited to the proportion of Canada's West Coast Vancouver Island (WCVI) coho catch that originates in the U.S. Pacific Northwest.

The troll catch in the WCVI fishery does tend to include a higher proportion of U.S.-origin salmon than the recreational fishery. The troll fishery is conducted farther offshore where U.S. stocks constitute a higher percentage of the total number of fish.

Senator MURKOWSKI. We do not know how many of the fish that come down from Alaska are caught by the Washington and Oregon sport fisheries, do we?

Ambassador COLSON. Alaskan?

Senator MURKOWSKI. Well, fish leaving Alaska and are going up the Columbia River system.

Ambassador COLSON. The Canadian sports fisheries?

Senator MURKOWSKI. The Canadian or Washington sports fisheries.

Ambassador COLSON. We know the Washington sports fishery. We do not have good information about the stock composition in the Canadian sports fisheries.

Senator MURKOWSKI. Why do we not?

Ambassador COLSON. It has been a source of contention in this process. The Canadian sports fisheries were very small in 1985

when we concluded this treaty. And we did not include them at that time as being under any of the limits of the treaty. The Canadians have not done a lot of work early in the process to determine stock composition in those sports fisheries. And it has been very hard to reach a meeting of the minds, although those discussions have occurred more frequently in the past 2 years than they did in the mid-eighties.

But I would still say that there is not agreement between us about the stock composition in those fisheries. I do think it is probably safe to say that the stock composition in the west coast of Vancouver Island recreational fisheries of Washington and Oregon stocks is not as high as it is in the commercial fisheries.

Senator MURKOWSKI. Finally, it states that U.S. commercial net fishermen off the San Juan Islands take hundreds of thousands of sockeye each year bound for Canada's Fraser River. Canadian negotiators have been offered a reduction of their catches of U.S. coho for a reduction of U.S. catches in Fraser River sockeye, even offering the United States two coho for each sockeye.

Ambassador COLSON. Well, there has always been an implied relationship. And it was even incorporated in the first year of the arrangements in 1985 between the sockeye catch limit for the Puget Sound fishery and the number of coho that the Canadians would take on the west coast of Vancouver Island.

Again, one of the things that is very troublesome in this process, Senator—and I have never been able to sort it out, but, again, I think it goes to the heart of why we are having these problems—when you start just looking at the state of origin of the salmon and trying to make a balance out of that in whatever form, you lose sight of the conservation problem and you lose sight of where you are being successful.

Right now, Canada is being very successful. It is having record productions out of the Fraser and out of the Nass and Stikine systems, and there are a lot of Canadian fish in U.S. waters being taken by American fishermen.

At the same time, the U.S.-origin fish that are in Canadian waters that can be taken by Canadian fishermen are generally in weak stock status conditions—the Washington chinook and coho stocks. I mean, we are not going to have coho fisheries in Washington and Oregon. There will not be a fishery off of Seattle this year. That is a dramatic conservation problem.

And Canada seeks, in return for a reduction from Canada in their impact on those coho, they want us to reduce our fisheries on healthy Canadian stocks that are mixed up in our fisheries, which would require us to forego opportunities now that we have helped them rebuild those runs. And so it is hard to put equity and conservation together. And if we could find a way to do that, maybe we could work our way out of this problem.

But, right now, we need Canada's help to conserve those resources and rebuild them, just as we have helped Canada over the years. And, at the same time, we find them asking what we regard as some very unreasonable conditions on other kinds of fisheries in the United States that are not suffering conservation problems, where we would have to forego a lot of opportunities, as you said,

in southeast Alaska to catch some record Alaskan runs. That is the dilemma.

Senator MURKOWSKI. This is my last question. Would you agree with the statement that U.S. fishermen are killing twice as many Canadian fish as Canadians are killing their own fish?

Ambassador COLSON. I think twice is a high number. But, again, Senator, you know better than I about the relative value between a pink salmon and a king salmon. That kind of a statement loses sight of all of those differences and is sort of irrelevant. If we get going down that road, we are never going to get this thing sorted out.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I think Dave has indicated in no uncertain terms his expertise in this highly complicated area. And I would hope that the negotiations continue to have your input.

Thank you very much.

The CHAIRMAN. Thank you very much.

And having the personal interest I do in the Bureau of Ocean Affairs—70 percent of the Earth's surface is under your jurisdiction—I am very glad indeed that you have this responsibility. Thank you for your testimony.

The hearing is adjourned.

[Whereupon, at 11:55 a.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

RESPONSES OF AMBASSADOR COLSON TO QUESTIONS ASKED BY SENATOR PELL

LAW OF THE SEA CONVENTION

Question. How important were the principles of the Law of the Sea Convention to the successful negotiation of this Treaty? Please expand upon this question from answers provided during the hearing should you feel it will be of assistance to the Committee.

Answer. Extremely important. The Treaty is built on the very framework provided in the LOS Convention. The Treaty can be seen as an elaboration of the basic obligations contained in the LOS Convention relating to the conservation of high seas fishery resources and the regulation of high seas fishing vessels.

The LOS Convention calls for states to cooperate with each other in the conservation and management of living resources of the high seas. In fulfillment of this obligation, many states, including the United States, have joined regional fishery organizations to conserve and manage such resources on a cooperative basis. The measures adopted by these organizations, however, have been undermined by fishing vessels that fly flags of states that remain outside these organizations and who do not exercise control over these vessels.

The FAO Agreement is designed to deter this practice and to improve knowledge about high seas fishing in general. In this way, the Agreement will further the fundamental objectives of the LOS Convention as well.

Question. Please identify those treaties which have been negotiated by the United States or are presently being negotiated by the United States which are based upon the fundamental principles of the Law of the Sea Convention.

Answer. Virtually all treaties relating to the use of the oceans rest on one or more of the fundamental principles of the LOS Convention. Those principles, of course, often pre-date the adoption of the LOS Convention in 1982.

An illustrative list of the fishing treaties that are based on the LOS Convention principles would include:

—Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean;
—Convention for the Conservation of Salmon in the North Atlantic Ocean;
—Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon;
—International Convention for the Conservation of Atlantic Tunas;
—Convention for the Establishment of an Inter-American Tropical Tuna Commission;
—Convention on the Conservation of Antarctic Marine Living Resources;
—International Convention for the Regulation of Whaling;
—Convention Between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, With Protocol;
—Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (not yet in force).

A wide range of treaties on subjects other than fishing also reflect the fundamental principles of the LOS Convention. Some examples include:

—Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention);
—International Convention for the Prevention of Pollution From Ships as Modified by the Protocol of 1978 (MARPOL);
—Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (the SPREP Convention);
—Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the Cartagena Convention);
—International Convention for the Safety of Life at Sea, as amended;
—Convention on the High Seas;

—Convention Against Illicit Traffic in Narcotic Drugs and Psychotic Substances.

Although it is not a treaty, Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development, recognized the Law of the Sea Convention as "the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources."

Question. Ambassador Colson's testimony stated that the fishery provisions of the Law of the Sea Convention "contain basic obligations for states whose vessels fish on the high seas to cooperate in the conservation and management of high seas resources."

Please identify the specific obligations as set forth in the Convention referred to above.

Answer. With respect to the conservation and management of living resources of the high seas, Articles 116–120 of the LOS Convention set forth the obligations in question.

Article 116 preserves the right of every state for its nationals to engage in fishing on the high seas, but makes that right subject to the state's treaty obligations, to certain rights, duties and interests of coastal states, and to the provisions of Articles 117–120.

Article 117 imposes on states the duty to take, or to cooperate with other states in taking, such measures for their respective nationals as may be necessary for the conservation and management of the living resources of the high seas.

Article 118 requires states to cooperate in the conservation and management of the living resources of the high seas, including, as appropriate, through the establishment of subregional and regional fisheries organizations.

Article 119 establishes certain parameters within which states must determine allowable catch and establish other conservation measures for the living resources of the high seas. This provision also calls for the contribution and exchange of relevant data and requires that conservation measures do not discriminate against fishermen of any state.

Article 120 makes Article 65, which preserves the right of a coastal state or an international organization to regulate the exploitation of marine mammals more strictly than the exploitation of other living resources, applicable to conservation and management of marine mammals in the high seas.

Question. Ambassador Colson further stated that, "under the Law of the Sea Convention, flag states must also ensure that there is a genuine link between themselves and the vessels that fly their flag."

Please set forth the provisions of the Convention referred to above and explain how flag states are required to meet their obligations.

Answer. Article 91 of the Convention requires, *inter alia,* that there must be a genuine link between a ship and the state whose flag the ship is entitled to fly. The Convention does not specify how states are required to meet this obligation.

The FAO Agreement represents an effort to strengthen and make more specific this requirement in the context of high seas fishing vessels. While the FAO Agreement does not impose any conditions on the ability of states to allocate their flag to such vessels, Article 111(3) of the Agreement provides that:

> No party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.

* * * * * * *

To the extent any of the following questions may have been addressed at the hearing, please expand upon your answer if you have anything further which might assist in the Committee's consideration of this treaty.

REFLAGGING PROBLEM

Question. What is the nature of the reflagging problem? What states are reflagging or initially flagging fishing vessels that do not comply with regulations of the fishing, conservation and management regimes? How extensive is the problem?

Answer. The reflagging problem can be summed up as follows: Fishing vessels flying the flag of a state participating in the international fishery organizations reflag to non-member states as a means to avoid fishing restrictions that would otherwise apply. In addition, a growing number of newly built high seas fishing vessels are registered directly, that is, without reflagging, in states that are not members of

these organizations, precisely because these states are not bound by the restrictions of those organizations.

Among the states that have allowed vessels to use their flag for such purpose are Belize, Honduras, Panama, Poland and Sierra Leone. The problem is extensive in that it has significantly undermined the ability of responsible members of the international community to regulate high seas fishing effectively.

Question. Please summarize the fishery regulations which would otherwise apply to these fishing vessels if they had not reflagged.

Answer. Some of the fishery regulations at issue are found in the very treaties that establish the regional fishery organizations. One example is the Convention for the Conservation of Salmon in the North Atlantic Ocean. Article 2 of that Treaty prohibits fishing for salmon beyond areas of fisheries jurisdiction of coastal states. In recent years, vessels that had been flagged in states that are parties to this Treaty have reflagged to non-party states and have been spotted fishing for salmon in areas of the North Atlantic Ocean beyond the fisheries jurisdiction of coastal states.

More often, the fisheries regulations are those that are adopted periodically by the regional fishery organizations, generally at annual meetings. A list of all such regulations would be very extensive. Some involve quota allocations, others stipulate the minimum size of fish that may be retained, others involve time and area closures.

NON-COMPLIANCE

Question. How does the proposed Agreement address the non-compliance of States which are not parties to the current international fisheries organizations? If they stay outside of the existing fisheries organizations, won't the same states simply choose not to become parties to this as well, and continue their current practice?

Answer. The Agreement establishes the rule that no fishing vessel on the high seas may undermine the effectiveness of conservation and management measures adopted by such organizations. The Agreement also prohibits parties from issuing a high seas fishing license to a vessel unless it can control that vessel.

We certainly hope that many states, including flag-of-convenience states, will become party to the Agreement. We intend to use all diplomatic means at our disposal to persuade them to do so. Indeed, by raising the political cost for states who issue flags of convenience, we have already had some success in limiting such practices. This Agreement will give us another tool with which to pursue these ends.

Question. What grounds are there for thinking that this Agreement will induce these States to cooperate?

Answer. The fact that this Treaty was negotiated under the auspices of the UN Food and Agriculture Organization should help induce such cooperation. Many of the flag-of-convenience states are developing countries, who highly regard FAO and depend on FAO for assistance in fishery matters.

Moreover, the foreign ministries of at least some of the states in question have indicated that they would welcome the opportunity for their states to adhere to an international agreement such as the FAO Agreement. Along with a number of other countries, we have put considerable pressure on these ministries to press domestically for tighter controls over high seas fishing vessels. We have made clear that their acceptance and implementation of this Treaty would greatly increase the perception of these states as responsible members of the international community.

Question. What provisions in this treaty—or in the Law of the Sea Convention when it enters into force—will provide enforcement resources to ensure compliance by state parties? By non-state parties?

Answer. The FAO Agreement, like the Law of the Sea Convention, respects the jurisdiction of flag states over vessels flying their flag on the high seas. Accordingly, the Agreement imposes upon the flag state the primary obligation to ensure that its high seas fishing vessels operate in a manner consistent with the Agreement.

Article V of the FAO Agreement adds a requirement of cooperation among parties in the implementation of the Agreement. Among other things, it calls upon the parties to exchange evidentiary materials relating to improper fishing activity on the high seas. Article V also recognizes the role of port states to act in such circumstances.

Should a party to the FAO Agreement fail to live up to its obligations, Article IX provides a basis on which other parties could pursue dispute settlement.

Finally, Article VIII of the Agreement requires parties to cooperate to the end that fishing vessels of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

CONSERVATION AND MANAGEMENT REGIMES

Question. What international fishing conservation and management regimes are currently in place? What organizations have created them? What has been their effect?

Answer. The United States participates in numerous international fishery conservation and management organizations, including the International Commission for the Conservation of Atlantic Tunas, the Inter-American Tropical Tuna Commission, the North Atlantic Salmon Conservation Organization, the North Pacific Anadromous Fish Commission, the Commission for the Conservation of Antarctic Marine Living Resources, and the International Whaling Commission.

The Senate has also given its advice and consent to the treaty establishing the Northwest Atlantic Fisheries Organization; U.S. participation in that organization can begin after enactment of implementing legislation.

Many other such organizations exist around the world in which the United States does not participate, primarily because these organizations relate to fisheries in regions in which the United States has no significant fishery interest.

These organizations have met with varying degrees of success in fulfilling their mandates. The FAO Agreement will enhance the ability of these organizations to carry out their missions by preventing fishing vessels from evading the controls established by these organizations.

Finally, it should be noted that the FAO Agreement only reinforces international conservation and management measures that are adopted in conformity with the Law of the Sea Convention. Should a group of states purport to adopt fishing measures in a manner inconsistent with the Convention, the United States would not be obliged to ensure that our high seas fishing vessels honor those measures.

EXEMPTIONS

Question. Article II of the Agreement permits States to exempt fishing vessels of less than 24 meters from the Agreement's requirements. How was that figure determined? Would that potentially exempt a large number of existing fishing vessels?

Answer. First, I must note that the Agreement only allows parties to exempt vessels of less than 24 meters from *some* of the requirements, namely the administrative requirements. Parties must ensure that *all* their high seas fishing vessels, regardless of length, do not undermine international conservation and management measures and must take enforcement action against *all* such vessels that do not comply.

The 24-meter length strikes a balance between covering as many vessels as possible without posing insurmountable administrative obstacles for some states. As a reference point, certain IMO Treaties relating to vessel safety have also adopted the 24-meter length as a cut-off.

Question. What decision will the United States make with regard to this exemption?

Answer. This decision must be made by Congress and the Administration together in the context of enacting implementing legislation. From the Administration's perspective, we will propose to cover all U.S. high seas fishing vessels, regardless of length.

Question. Article II also permits coastal States that have not created a 200 mile exclusive economic zone to determine for themselves what vessels flying their flag should be exempted from the Agreement. What is the rationale for this provision?

Answer. The Agreement applies to fishing vessels on the high seas. Where coastal states have not declared 200-mile zones, the high seas begin very close to shore, with the effect that an extraordinarily large number of fishing vessels in those regions are fishing "on the high seas." In such cases, the Agreement allows the coastal States, acting in concert, to vary the 24-meter minimum size with respect to vessels fishing exclusively in such regions.

Question. What countries would come under this provision?

Answer. Most coastal states have established 200-mile zones. One exceptional area is the Mediterranean Sea, where the coastal states have not done so because of the difficult maritime boundary problems that would arise.

POSITION OF U.S. FISHING INDUSTRY

Question. What is the position of the U.S. fishing industry with respect to this treaty? Were they consulted during the negotiations? If so, in what manner?

Answer. Toward the end of the negotiations on this Treaty, the Department of State received a letter from the General Category Tuna Association expressing support for the Treaty and urging us to make its conclusion a matter of priority for

the United States. The following industry and conservation organizations co-signed the letter: World Wildlife Fund, East Coast Tuna Association, National Audubon Society, Montauk Boatmen & Captains Assn., R.I. Party and Charterboat Assn., United Boatmen of N.J. and N.Y., Jersey Coast Anglers Assn., National Coalition for Marine Conservation, Confederation of the Association of Atlantic Charterboats & Captains, and National Fishing Association.

The Administration consulted with representatives of the U.S. fishing industry about the Treaty throughout the negotiating process. These consultations, which also included representatives of environmental non-governmental organizations, took place informally, as part of the general briefings and consultations on international fishery issues periodically undertaken by the Administration.

Question. Was an advisory panel of outside interests created in conjunction with the negotiation of this treaty? If so, please identify the participants.

Answer. No formal advisory panel was created in conjunction with the negotiation of this treaty.

IMPLEMENTING LEGISLATION

Question. Does the Administration intend to withhold deposit of the instrument of ratification and delay entry into force of the treaty for the United States until implementing legislation is signed into law?

Answer. Yes.

FURTHER STEPS

Question. You stated that the treaty "represents one of several steps we must take to strengthen conservation and management measures for living marine resources and to improve knowledge about ocean fishing in general."

Please share with the Committee other steps either being taken or which may be appropriate or necessary in the future.

Answer. In response to the collapse of the pollock stocks in the Bering Sea caused by foreign overfishing in the "Donut Hole," the Administration recently concluded the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, for which we will shortly be seeking Senate advice and consent to ratification.

We are also actively pressing for a successful outcome to the on-going United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as the development of other parts of the FAO Code of Conduct for responsible fishing.

It is difficult to predict what additional steps may be appropriate or necessary in the future. Much will turn on the outcome of the above-mentioned initiatives, as well as the extent to which the FAO Agreement is accepted and well-implemented. In this regard, it is worth reiterating that prompt acceptance and thorough implementation of the Agreement by the United States will be a key to success.

Question. Will the Executive Branch submit to the Senate for advice and consent all reservations presented by other Parties, which are agreed to by the United States?

Answer. The text of Article XII is a standard clause developed by the FAO to restrict reservations and has never presented difficulties or hitherto been questioned even when used outside the FAO context. For example, the identical language appears in Article XIV, paragraphs 3, 4, and 5 of the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva, November 7, 1952, to which the Senate gave advice and consent on February 22, 1956 (8 UST 1638, 1656). In the ensuing thirty-eight years, no country has reserved under that provision. Nor has any country reserved under provisions containing the same language that appear in two 1961 agreements approved by the Food and Agricultural Organization. The reason for this is that the veto power inherent in the provision precludes states in a workaday world from making reservations. However, should such a reservation be presented by another state, the Executive Branch would not normally submit to the Senate for advice and consent such a reservation.

Question. If the Executive Branch does not plan to submit all reservations presented by other Parties, which have been agreed to by the United States, to the Senate, please set forth the reasons why it would not be required to do so.

Answer. Neither Article II, section 2, clause 2 of the Constitution nor our practice with respect to multilateral treaties would require the Executive Branch to submit that reservation to the Senate for advice and consent to ratification. In giving its advice and consent to a multilateral treaty, the Senate gives its advice and consent to the provisions of that treaty governing which states and perhaps international organizations may become parties. Application of treaties, including acceptance or objection to reservations in respect of multilateral treaties, is a function of the Exec-

utive Branch. The practice of the United States in this respect corresponds to that of other countries. For example, although Denmark, Estonia, Finland, Greece, Ireland, Italy, Mexico, the Netherlands, Norway, Spain, Sweden, and the United Kingdom objected to one or both of the reservations made by the United States to the Genocide Convention, the decisions in those countries appear to have been taken exclusively by executive authorities.

Question. If the Executive Branch does not plan to submit all reservations presented by other Parties, which have been agreed to by the United States, will it submit to the Senate for advice and consent *all* such reservations which alter the obligations of the United States, or other Parties to the Convention, as a result of acceptance of the reservation?

Answer. The Executive Branch does not plan to submit to the Senate for advice and consent *all* reservations which alter the obligations of the United States. It would however, consult with the Senate in appropriate cases to determine whether or not submission would be appropriate.

Question. Will the Executive Branch agree to notify the Senate in a timely manner of all reservations made by Parties to the Convention?

Answer. The Executive Branch would expect to be able to notify the Senate of any reservation it received from the Director-General under Article XII of the Convention, although it does not anticipate that any such reservation will be made.

Question. The Executive Branch has not notified the Senate in the recent past of reservations made by other Parties to treaties to which the Senate has given its advice and consent. Will the Executive Branch agree to do so in the future?

Answer. Immediate implementation of the reporting contemplated by this question would pose certain practical problems that the Executive Branch would be prepared to discuss with the Committee Staff. From a longer term perspective, however, reporting features that are expected to be incorporated in the Treaty Information Management System that is under development should permit generation of such data for the information of the Senate.

Question. Will the Executive Branch agree to also transmit to the Senate for its advice and consent any such reservation which alters the obligations of the United States, or another Party, under the particular treaty in question?

Answer. The Executive Branch would not plan to do so.

RESPONSES OF AMBASSADOR COLSON TO QUESTIONS ASKED BY SENATOR MURKOWSKI

HIGH-SEAS AGREEMENT

Question. This agreement is intended to prevent undermining international conservation and management agreements. Does that include not only multinational agreements, but also any bilateral agreements such as those which the United States has had with some driftnetting nations?

Answer. The agreement conceivably could cover bilateral arrangements. The bilateral agreements the United States had with Japan, the Republic of Korea, and Taiwan, however, addressed only observer and data collection programs. They did not purport to manage driftnet activities on the high seas.

Question. We've recently had a report (June 20 report attached) of a possible high-seas driftnet vessel operating with name and numbers concealed. Does this agreement address the ability to enforce against such vessels?

Answer. The agreement requires a party specifically to authorize its vessels to fish on the high seas, and to condition that authority on proper marking so that vessels can be readily identified. A party must also ensure that its vessels do not undermine the effectiveness of international conservation and management measures, which could include the United Nations moratorium on large-scale driftnet fishing. Articles V and VIII require cooperation among parties to identify vessels undermining the effectiveness of international conservation and management measures and to discourage such activities.

Attachment

[June 20 Report]

SIGHTING OF POSSIBLE HIGH SEAS DRIFTNET VESSEL

= 20 June 1994. Initial sighting of possible high seas driftnet vessel made by Canadian P–3 flying out of Shemya, Alaska, with NMFS member on board.

= 200-foot vessel sighted approximately 900 miles east of Japan, underway in a westerly direction. Estimated 4 days transit time from Japan.

= No flag displayed. Name painted over. Vessel did not respons to radio calls. Nets were observed, but vessel was not fishng.
= Photos were taken. Subsequent flights have not re-sighted vessel.
= USCG cutter response decision pends further information. Sighting was passed to Fisheries Agency of Japan enforcement authorities.
= Vessel was sighted in an area at the southern limit of salmon range/ area of Asian origin fish.

Question. You have said that you are confident additional nations can be persuaded to become parties to this agreement. How can that be assured?

Answer. Nations will be persuaded to become parties to this agreement through the Food and Agriculture Organization, which sponsored its negotiation; through the United Nations itself; and through the diplomatic efforts of the United States and other responsible fishing nations. Most countries, even those with "flag-of-convenience" registries, do not want to become known as a refuge for pirate fishing vessels. In fact, the idea for this agreement came from countries that wanted an international instrument as a basis for new domestic law to control fishing vessels flying their flags.

Question. Is there a sanction process for nations that refuse or for nations which are party to the agreement but do not live up to their obligations?

Answer. There is no specific sanction process. Article VIII requires parties to cooperate "in a manner consistent with this agreement and with international law to the end that fishing vessels entitled to fly the flag of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures." Article IX sets out mechanisms to resolve disputes between parties.

Question. This agreement specifically does not affect the "opt-out" provisions in certain international agreements. What prevents this fact from creating a large loophole through which the effectiveness of this or other international agreements can be undermined?

Answer. A country that has properly lodged a reservation or objection to a particular conservation and management measure adopted by an international organization to which it belongs is not required to make its nationals comply with that measure. The countries that participated in negotiating the agreement could find no practical way to compel compliance by vessels of an "opting-out" party, in light of this international practice. We do not expect this situation to create a large loophole, since "opting out" is an infrequent occurrence in international fisheries organizations. Note that only a country that is a member of such an organization may exempt its vessels from complying with the rule by lodging a proper reservation or objection. Countries that are not members, but that become parties to the compliance agreement, must ensure that their vessels do not undermine the effectiveness of *any* measures governing the fishery, even if a member has opted out.

U.S.-CANADA SALMON

Question. The U.S. position on Canada's so-called "transit license" has been that it violates various international agreements. Specifically, what agreements does it violate and how? (Please provide cite references to provisions of specific agreements).

Answer. Circumstances have changed considerably. Canada has now lifted the transit fee and negotiations are to be underway soon.

The Department of State concluded that the Canadian transit fee was inconsistent with international law.

The fee was inconsistent with rights guaranteed to vessels under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

The fee was also inconsistent with Canada's obligations under the GATT and NAFTA, including obligations with respect to freedom of transit and non-discrimination.

The fee also violated a variety of other Canadian commitments, including to guarantee port privileges in British Columbia to U.S. commercial fishing vessels.

Question. According to White House staff who briefed Members of the House and Senate last week, the Administration has looked at a broad range of possible actions should Canada not rescind the transit license. What specific actions is the Administration considering, and under what circumstances?

Answer. The Administration's objective has been to convince Canada to lift the fee and to resume negotiations for long-term, conservation-oriented fishery regimes under the Pacific Salmon Treaty. That objective has now been met.

Options for responsive U.S. actions were under consideration before the agreement to resume negotiations. However, given that the fee has been lifted, these measures are no longer under consideration.

Question. If the transit license violates the provisions of conservation agreements on halibut and albacore tuna, is Canada subject to trade sanctions as well as actions that would more directly retaliate for the current transit fee?

Answer. Again, since Canada has lifted the fee in question, these issues are now moot. In any event, these agreements do not contain provisions relating to trade sanctions or other retaliatory actions.

Question. Any agreement must be science-based to be effective, but there are wide differences in what each country claims are the other country's interceptions. How would you propose to arrive at an impartial analysis acceptable to both Parties?

Answer. A great deal of progress has been made since the treaty was concluded in 1985 in narrowing the differences in interception estimates. This work has been done on a cooperative basis and has been part of improved scientific knowledge of salmon that the treaty has helped provide.

Joint work on further narrowing of interception estimates will continue.

Question. Canada has suggested that the U.S. Government, specifically the White House, should settle the current stalemate outside the Pacific Salmon Commission process. (a) Under what conditions would that be possible? (b) Have those conditions been met? (c) Do you believe such radical intervention is needed?

Answer. In any negotiation of the Pacific Salmon Treaty, meaningful participation of the U.S. section of the Commission will be necessary.

Question. Canadian officials have repeatedly stated that the United States has been unresponsive on the issue of "equity"—that it has failed to forward a position in response to Canada's proposals. Are you satisfied that the U.S. has made an appropriate response, even if that is not the response Canada desires?

Answer. The U.S. view is that the "equity" issue is considerably more complex than Canada considers it to be.

The treaty specifies that each country is to receive benefits equivalent to production of fish in its waters. Different fish have different values. Values or benefits can vary depending upon where the fish are caught and by whom.

For example, a recreationally-caught fish is considered to be more valuable than the same fish caught commercially. The fact is that Canada catches a lot of U.S. salmon that would otherwise be caught in U.S. recreational fisheries. Most U.S. interceptions of Canadian-origin salmon are of sockeye, which is not of recreational value.

The U.S. equity position takes this and other such important considerations into account.

Question. Canadian officials have implied that the position taken by Alaska has been the sole, or primary block to an equity agreement. What is your view of these statements? If there are national concerns that mitigate against the Canadian proposal, what are they?

Answer. The United States and Canada have vastly different approaches to the equity issue. Canada has taken a very hard line in the equity discussions. U.S. interests, including those of Alaska, would not be served well by agreeing to the Canadian approach.

The recreational salmon fisheries were dealt with in a previous question. Other factors of importance to the U.S. side that have been dismissed by Canada include—but are not limited to—flooding by Canada of U.S. fisheries, fish with special values due to their endangered or threatened status, and the equity implications of actions taken for conservation purposes.

Question. One of the most contentious Treaty issues involves the Canadian guided or resort-based recreational fishery off the West Coast of Vancouver Island, which is reputed to take large numbers of coho and king salmon from Washington and Oregon streams. What has been done to ensure that we have complete confidence in the reported size of these catches?

Answer. Considerable work was done during the 1992/93 negotiations to narrow the gap between U.S. and Canadian estimates of the recreational harvest off the West Coast of Vancouver Island (WCVI).

The U.S. estimate of the average WCVI coho catch for the 1989–92 period is 81,000 fish. The Canadian estimate for the same period is 77,500.

The U.S. estimate of the average WCVI chinook catch for the 1989–92 period is 96,750 fish. The Canadian estimate over that period is 111,750 fish.

Canada and the U.S. also differ on the origin of that catch. Canada believes that a lower proportion of the total catch are of U.S. origin than does the United States.

Question. It has been reported that one of the Pacific Salmon Commission voting members from Canada is the president of a company that operates 25 lodges, char-

ter vessels and other facilities on the west coast of Vancouver Island. (a) Is this regarded as a conflict of interest? (b) Do any United States voting members have such direct conflicts as a result of their business activities? (c) Has the United States ever addressed this issue with Canada, and if not, why not?

Answer. The Government of Canada has, in accordance with its own internal requirements and laws, determined the composition of the Canadian section of the Pacific Salmon Commission.

Neither country has consulted with the other regarding questions related to the determination of its representation to this international commission.

U.S. non-Federal commissioners represent the States of Alaska and Washington, as well as the treaty tribes. Each commissioner brings a wide range of interests to the negotiations.

Question. You have indicated you are not confident that we know the extent of the recreational harvest in Canada, and we have information indicating that of the fish taken there, 55–70% of the coho are from the Pacific Northwest states. If I understand correctly, you also indicated that you believe the stock composition in Canada's commercial fishery is even more heavily weighted toward U.S. fish. How do you know that?

Answer. The 55–70% figure cited refers to the proportion of Canada's West Coast Vancouver Island (WCVI) coho catch that originates in the U.S. Pacific Northwest.

The troll catch in the WCVI fishery does tend to include a higher proportion of U.S.-origin salmon than the recreational fishery. The troll fishery is conducted further offshore where U.S. stocks constitute a higher percentage of the total number of fish.

Question. What is the relative impact on Pacific Northwest coho and chinook stocks from fisheries in Alaska versus sport and commercial fisheries in Canada?

Answer. Few coho that originate in the Pacific Northwest are caught in southeast Alaskan fisheries because they do not generally migrate that far north.

Approximately half of the 263,000 chinook treaty harvest ceiling caught in southeast Alaskan fisheries originates in the Pacific Northwest. During the 1985–91 period, the Canadian harvest of chinook from the Pacific Northwest averaged about 480,000 fish annually.

Question. Canadian lodges advertise heavily in the United States. Seattle newspapers frequently run ads suggesting that Americans come to Canada to do their sport fishing. One company advertises "hungry giant ocean salmon" in one ad, and in another it tells anglers they can catch "8 salmon, 2 halibut, and 2 ling cod." Meanwhile, Alaska has a one-chinook limit and Washington has closed its sport fishery. (a) What percentage of the Canadian recreational harvest is actually taken by Americans who go to Canada for the larger limits? (b) What is this fishery worth to British Columbia compared to its commercial fishery? (c) What is the fishery worth to British Columbia compared to its claimed losses from U.S. interceptions?

Answer. We have no statistical information available that relates to these questions. Anecdotal evidence for some Canadian fishing lodges puts the proportion of U.S. guests at about half of the total.

STATEMENT OF THE GENERAL CATEGORY TUNA ASSOCIATION

May 5, 1993.

Hon. WARREN CHRISTOPHER,
Secretary of State,
Washington, DC 20520.

Subject: Re-flagging of Fishing Vessels to Avoid Fishery Conservation and Management Restrictions/Measures

DEAR MR. SECRETARY: The co-signers to this statement strongly support the decision of the United Nations Conference on Environment and Development to call upon all states to take effective action, consistent with international law, to deter re-flagging of vessels for the purpose of avoiding fishery conservation measures.

The undersigned collective industry and conservation groups urge all involved fishing nations to move expeditiously to reach international agreement eliminating re-flagging.

Such agreement should build upon Article 117 of the United Nations Convention of the Law of the Sea requirement that all states have the duty to take or cooperate with other states in taking such measures for their respective nationals as may be necessary for the conservation of living marine resources on the high seas and within exclusive economic zones.

We urge you to make the negotiations of the re-flagging treaty a matter of priority for the United States.

Sincerely,

1. GENERAL CATEGORY TUNA ASSOCIATION
2. WORLD WILDLIFE FUND
3. EAST COAST TUNA ASSOCIATION
4. NATIONAL AUDUBON SOCIETY
5. MONTAUK BOATMEN & CAPTAINS ASSOCIATION
6. RHODE ISLAND PARTY AND CHARTERBOAT ASSOCIATION
7. UNITED BOATMEN OF NEW JERSEY & NEW YORK
8. JERSEY COAST ANGLERS ASSOCIATION
9. NATIONAL COALITION FOR MARINE CONSERVATION
10. CONFEDERATION OF THE ASSOCIATION OF ATLANTIC CHARTERBOATS AND CAPTAINS
11. NATIONAL FISHING ASSOCIATION

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